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December 21, 1998

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VIA FEDERAL EXPRESS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

**Re: Reply Comments of the Small Cable Business Association
CS Docket No. 98-120**

Dear Ms. Salas:

On behalf of the Small Cable Business Association ("SCBA"), we enclose an original and nine (9) copies of the above-referenced reply comments. We request that each Commissioner receive a copy of SCBA's Reply Comments.

In addition, we provide a "FILE COPY." We ask that you date-stamp and return it in the enclosed Federal Express envelope.

If you have any questions, please call us.

Very truly yours,

Lisa M. Chandler

Lisa M. Chandler

Enclosures

cc: Small Cable Business Association
Ben Golant - Cable Services Bureau
ITS

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Before the
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In the Matter of)	
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Carriage of the Transmission)	CS Docket No. 98-120
of Digital Television Broadcast Stations)	
)	
Amendments to Part 76)	
of the Commission's Rules)	

**REPLY COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

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December 21, 1998

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SUMMARY

As the Commission considers potential mandatory carriage of digital signals, it must carefully focus on the potentially devastating impact it could have on small cable businesses. The Small Cable Business Association ("SCBA") opposes any digital carriage requirement. Nonetheless, SCBA has provided detailed comments to assist the Commission in understanding the gravity of small cable's concerns.

SCBA also suggests herein some potential practical solutions that begin to address the concerns of smaller cable operators; however, this should by no means be construed as an endorsement of a mandatory digital carriage requirement. Rather, SCBA suggests these solutions in order to ensure that at the end of this proceeding the Commission has heard the concerns of smaller operators and has taken them into account. A mandatory digital carriage requirement could significantly roll back all of the positive customer-service gains smaller operators have made in the last two years and put smaller operators in a seriously disadvantaged competitive position.

The high per subscriber cost of digital carriage renders it an economic impossibility for many small systems today. With headend costs likely to exceed \$2,000 per digital signal, a small cable system could face, for example, \$60,000 of headend costs alone. The high cost of digital set-top boxes only increases the per subscriber costs not faced by larger systems.

Any regulatory framework that contains a carriage requirement must also provide meaningful relief to small cable. The Commission must decide small cable issues concurrently with digital carriage issues in general. Suggested alternatives, *e.g.*, a waiver

process, phased implementation, or limiting relief to systems exempt under the analog carriage scheme, fail to address small cable's needs.

Even if the Commission refuses to impose a digital carriage obligation on small cable, broadcasters will seek to impose it through other means. Broadcasters will hold retransmission consent of their analog signals hostage to obtain carriage of their digital transmissions. This practice, along with demanding exorbitant cash compensation in the alternative, threatens small cable's financial viability. The Commission must address this critical issue to prevent broadcasters from undermining any Commission provisions for small cable.

Small cable has found innovative ways to deliver digital satellite signals in all but the smallest systems. SCBA and its members continue to work to identify even more creative ways to bring those signals to the smallest systems. Small cable will do the same with digital broadcast television. The Commission, however, cannot mandate deployment before economic and technological constraints have been satisfied. Doing so would threaten the financial viability of these small systems.

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**REPLY COMMENTS OF THE
SMALL CABLE BUSINESS ASSOCIATION**

I. INTRODUCTION

As the Commission considers mandating digital signal carriage, it must act carefully to avoid imposing significant financial harm on small cable systems providing service to rural America. The Small Cable Business Association ("SCBA") submits these reply comments to bring to the Commission's attention the concerns of small cable businesses and small cable operators (collectively "small cable"). Formed in 1993, SCBA acts on behalf of its nearly 300 small cable business and small cable operator members to help develop a regulatory and competitive environment that permits the continued participation of small cable.

With these reply comments, SCBA will accomplish the following:

- ❖ Identify the high per subscriber capital costs of digital carriage that limit small cable's options.
- ❖ Explain how other commenting parties' approaches to addressing small cable needs fail to accommodate the true needs of small cable.

- ❖ Explain the necessity of preventing broadcasters from conditioning analog retransmission consent on digital carriage.

SCBA does not dispute that a successful transition to digital television requires cooperation among all providers. In carrying out its role, however, the Commission must facilitate the transition without sacrificing small cable in the name of success for broadcasters.

II. SUMMARY OF SCBA'S COMMENTS

In its comments in this proceeding,¹ SCBA explained that the Commission must give careful consideration to small cable issues when crafting any digital carriage requirement. In addition to the statutory and constitutional infirmity of mandatory digital carriage, small cable has many practical concerns. To help alleviate the financial impact any digital must-carry requirement would have on small cable, SCBA proposed, and continues to propose, the following regulatory framework if and only if the Commission imposes any carriage requirement:²

- ❖ **Provide relief to systems with 15,000 or fewer subscribers.** The system size definition used for the small system rate rules also properly describes the systems that warrant relief from digital carriage requirements.
- ❖ **No requirement for small cable in smaller television markets.**
 - ◆ **Prior to the return of analog broadcast spectrum.** Concurrent analog and digital broadcasts pose the same difficulty for small broadcasters that dual carriage poses for small cable. If the Commission removes the dual broadcast requirement for small

1 See Comments of the Small Cable Business Association in CS Docket No. 98-120 (filed October 13, 1998) ("SCBA Comments").

2 See generally SCBA Comments.

television markets, it should also refrain from any small system digital carriage requirement in those markets.

- ◆ **After return of the analog broadcast spectrum.** The Commission should forego any small cable carriage requirement, instead relying on strong market forces to ensure carriage when technically and economically viable. With all broadcast signals only in digital format and continued aggressive DBS competition, small cable will have a huge incentive to carry local digital signals if at all possible.
- ❖ **Exempt small cable systems with 5,000 or fewer subscribers.** Regardless of the television market size, the Commission should exempt all systems with 5,000 or fewer subscribers because they cannot afford the high fixed cost and resulting high per subscriber cost of implementing digital carriage.
- ❖ **Require carriage by systems between 5,000 and 15,000 subscribers only where technically and economically viable.** Small cable businesses remain best positioned to determine when digital signal carriage becomes technically and economically viable. A small system would have an obligation to carry digital signals following a request from a local broadcaster, unless it certified to the broadcaster the technical or economical inviability of carrying the digital signal. This process would also facilitate business-to-business discussions and potential cooperative solutions.

III. PARTIES ADVOCATING CABLE CARRIAGE UNIFORMLY IGNORE SMALL CABLE'S UNAFFORDABLE PER SUBSCRIBER CAPITAL COSTS.

Commenting parties ignore the impact the capital costs associated with digital carriage will have on small cable. High per subscriber capital costs, however, remain the principal impediment to small cable's carriage of digital broadcast signals.

A. Headend costs of digital conversion.

Technological uncertainty stemming from unresolved format issues renders digital carriage costs estimation difficult. Some of the costs to cable operators associated with digital carriage include "headend equipment costs, including install[ation of] expensive antennas, antenna towers, and processing equipment in order to receive digital broadcast

signals and pass them through the system or convert them for redistribution in the cable industry's modulation format."³ Because it cannot accurately assess all costs involved with digital carriage, SCBA bases its cost analysis on the current costs associated with the digital service Headend in the Sky ("HITS"). As SCBA explained, the lowest cost per digital channel for HITS equals \$1,000.⁴

Basing cost estimates on current costs associated with cable systems' use of HITS underestimates those costs. The cost increases significantly if a system adds only a few channels. SCBA's estimate also does not include the cost of equipment necessary to reprocess the digital signal that broadcast signals will require.⁵ Other limitations associated with HITS suggest an even greater per digital channel cost. Use of HITS does not require rebuilding plant and does not permit insertion of other digital services into the digital tier⁶ — additional costs for digital carriage. Actual per digital channel costs will more realistically equal at least \$2,000.⁷

A cable system's headend costs will depend on both the number of digital broadcasts stations carried and the number of signals each station elects to broadcast. For the average television market with five stations, a cable system will have to pay at least

3 See Comments of the National Cable Television Association in CS Docket No. 98-120 (filed October 13, 1998) at 50 ("NCTA Comments").

4 SCBA Comments at 6 (this assumes the addition of a significant number of channels).

5 *Id.*

6 NCTA Comments at 50.

7 SCBA Comments at 6.

\$10,000 in headend costs to carry five digital signals. If each station elects, as most will, to broadcast more than one signal, the cost multiplies. The following table shows the impact on per subscriber costs of carrying multiple broadcast signals on variously sized systems:

Per Subscriber Headend Cost of Digital Carriage (Number of Channels for Each of Five Local Stations)			
System Size	One Channel	Three Channels	Six Channels
100 subscribers	\$100.00	\$300.00	\$600.00
500 subscribers	\$20.00	\$60.00	\$120.00
1,000 subscribers	\$10.00	\$30.00	\$60.00
5,000 subscribers	\$2.00	\$6.00	\$12.00
10,000 subscribers	\$1.00	\$3.00	\$6.00
15,000 subscribers	\$0.67	\$2.00	\$4.00

B. Set-top box costs.

Set-top box costs dramatically increase the per subscriber cost of digital carriage. SCBA previously estimated that a set-top box would cost at least \$300.⁸ Other commenting parties' estimates suggest costs ranging from \$400 to \$700 per unit.⁹ Even those estimates seem low considering Thomson Consumer Electronics, Inc. will begin

8 SCBA Comments at 7.

9 NCTA Comments at 49.

marketing a digital set-top box in 1999 with a “relatively low suggested retail price of \$700.”¹⁰

C. The costs associated with digital carriage will threaten small cable’s continued existence.

The costs of digital conversion, as detailed above, will financially cripple small cable businesses. Nearly two-thirds of the nation’s cable systems “are small and independently owned and operated,” with most serving fewer than 1,000 subscribers.¹¹ This fact, coupled with the unique characteristics of those systems, makes a uniform regulatory approach to small cable digital carriage insurmountable.

A carefully-crafted approach for small cable digital carriage becomes necessary. SCBA provides the Commission with such an approach.¹² Other commenting parties offer alternative approaches. As SCBA explains below, none of these alternatives will provide meaningful relief to small cable.

IV. THE SMALL CABLE ALTERNATIVES SUGGESTED IN PARTIES’ COMMENTS FAIL TO ACCOMMODATE THE TRUE NEEDS OF SMALL CABLE.

Several commenting parties offer alternatives that attempt to ease the burden of digital carriage on small cable. These alternatives, however, will not provide meaningful relief.

10 Comments of Thomson Consumer Electronics, Inc. in CS Docket No. 98-120 (filed October 13, 1998) at 5.

11 See SCBA Comments at 7 (internal citations omitted).

12 See *generally* SCBA Comments at 7-19.

A. A waiver process will not provide meaningful relief.

A waiver process does not adequately relieve the financial burden digital carriage imposes on small cable and will waste precious Commission resources. One commenting party sets forth a waiver process under which cable systems suffering from hardship may apply to the Commission for an exemption from dual carriage obligations.¹³

A waiver process lacks certainty. The Commission cannot rely on a waiver process as the principal vehicle for small cable relief. Mandatory digital carriage will adversely impact small cable's ability to obtain capital.¹⁴ The uncertainty associated with an ad hoc waiver process will also limit small cable's access to capital.¹⁵ The disruption to the capital markets will further limit, not facilitate, small cable's ability to launch digital services.

The costs of a waiver process also limit its utility. A petition for special relief currently carries a filing fee in excess of \$1,000 in addition to the costs of professional assistance needed to successfully seek a waiver. The total cost of seeking a waiver renders a waiver process unaffordable for many small systems.

A waiver process further burdens the Commission's resources. Digital carriage will threaten many of the more than 7,000 small and independently owned cable systems.

13 See Comments of The Association of America's Public Television Stations, The Public Broadcasting Service, and The Corporation for Public Broadcasting in CS Docket No. 98-120 (filed October 13, 1998) at 27.

14 See SCBA Comments at 23.

15 *Id.*

Waiver requests from even a small fraction of these systems will flood the Commission with petitions and strain the Commission's resources.

The cost to small cable businesses and the burdens placed on the Commission render a waiver process impractical as the principal means of small cable relief.

B. Phased implementation will not provide meaningful relief.

Phased implementation of digital carriage fails to fully address the needs of small cable. The National Association of Broadcasters suggests the gradual implementation of digital carriage obligations for certain cable systems.¹⁶ Phased digital carriage may "minimize instances of massive dislocation of existing programming services," but "fails to consider that the addition of the first signal carried would impose unaffordable capital costs."¹⁷ The success of digital carriage for small cable hinges on economic viability, not timing.

Tying digital carriage obligations to system changes also lacks validity. For example, using system upgrades or rebuilds as the trigger for digital carriage provides no relief. Rather, it would discourage small cable from upgrading or rebuilding analog capacity where digital capacity remains unaffordable.

16 See Comments of the National Association of Broadcasters in CS Docket No. 98-120 (filed October 13, 1998) at 35.

17 See SCBA Comments at 20-21.

C. Limiting relief to systems exempt from analog requirements fails to provide meaningful relief.

The suggestion of several commenting parties, that the Commission should limit small cable relief to the relief presently provided under the current must-carry rules, fails to adequately address small cable's concerns. Under the analog must-carry scheme, a system size of 12 or fewer activated channels with 300 or fewer customers serves as the benchmark for small system carriage obligations.¹⁸ Some commenting parties suggest that this benchmark will provide adequate small cable relief concerning digital carriage as well.¹⁹

The need for small cable relief from digital carriage differs. Congress exempted a very narrow group of low-capacity, extremely small systems from the analog must-carry requirement. Congress crafted this exemption narrowly because most small cable systems had the capacity to carry analog signals. Further, most small cable systems had affordable technology in place to receive and process analog signals. The same does not hold true for digital. Most small cable systems lack the ability to process and transmit digital signals

18 See 47 U.S.C. §534(b)(1)(A).

19 See e.g., Comments of Shockley Communications Corporation in CS Docket No. 98-120 (filed October 13, 1998) at 4; Joint Comments of Barry Telecommunications, Inc., Channel 5 Public Broadcasting, Inc., KTEH-TV Foundation, Metropolitan Board of Public Education, Mid-South Public Communications Foundation, Milwaukee Area Technical College District Board, Mississippi Authority of Educational Television, New Jersey Public Broadcasting Authority, Rhode Island Public Telecommunications Authority, University of North Carolina Center for Public Television, University of Southern Colorado, WHMT Educational Telecommunications, and WXXI Public Broadcasting Council in CS Docket No. 98-120 (filed October 13, 1998) at 4; Comments of Pappas Telecasting Incorporated et al. in CS Docket No. 98-120 (filed October 13, 1998) at 29.

and can obtain digital capability only at significant per subscriber costs. Analog small system relief simply bears no relevance to the economic realities of digital carriage for small cable.

V. THE COMMISSION MUST PREVENT BROADCASTERS FROM CONDITIONING ANALOG RETRANSMISSION CONSENT ON DIGITAL CARRIAGE.

Left unchecked, broadcasters will condition analog retransmission consents for small cable carriage on the concurrent carriage of digital transmissions.²⁰ Small cable's experience has shown that broadcasters offer retransmission consent on a "take it or leave it" basis. This results from small cable's lack of bargaining power, due to small subscriber bases.

The continued ability to carry broadcasters' analog signals, however, remains critically important to small cable. Analog carriage constitutes an integral component of small cable's competitive strategy, which has its basis in localism, including the carriage of local broadcast signals. Knowing this, broadcasters can leverage analog retransmission consent to gain digital carriage. Without Commission intervention, small cable risks losing this invaluable source of local programming. This loss will harm localism and undermine Congress' objective of the widest possible dissemination of broadcast signals.

Other retransmission consent practices cause similar harm to small cable. Practices that merit Commission attention include broadcasters' demands for exorbitant cash

²⁰ See SCBA Comments at 23-28.

compensation and imposition of higher rates than required for larger systems.²¹ As with tying digital carriage to analog retransmission consents, such disparate treatment puts small cable at a further competitive disadvantage.

Commenting parties largely ignore small cable's plight. The Commission must not turn a blind eye to these issues. The Commission instead must adopt a comprehensive policy regarding retransmission consent that private parties cannot circumvent. This policy must limit broadcasters' ability to condition analog retransmission consents on digital carriage and prevent disparate treatment regarding the terms and conditions of small cable carriage.

VI. CONCLUSION

If the Commission moves forward to create a regulatory framework that will govern the transition to digital television, it must carefully craft rules that adequately protect small cable from the financial devastation uniform regulations will almost certainly guarantee. The need for certainty and continued access to capital markets should guide the Commission's approach to small cable relief. High per subscriber capital costs, both at the headend and in the subscriber's home, remain a critical consideration when evaluating the feasibility of digital carriage for small cable. Most importantly, Commission regulations regarding small cable obligations must provide meaningful relief, rather than pay mere lip service to addressing small cable's unique needs.

²¹ See SCBA Comments at 25-26.

Another critical consideration involves the conditioning of analog retransmission consent on digital carriage. Any regulations must necessarily prevent broadcasters from demanding unreasonable terms and conditions or leveraging their superior bargaining power to require small cable's carriage of digital transmissions in return for retransmission consent for critical analog programming.

SCBA remains confident that small cable will introduce digital transmissions in the near future. Such introduction, however, must result from market conditions and small cable's financial ability to accommodate digital transmissions, not government fiat.

Respectfully submitted,

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December 21, 1998

CERTIFICATE OF SERVICE

I, Lisa M. Chandler, of Bienstock & Clark, certify that on December 21, 1998, I caused the **REPLY COMMENTS OF THE SMALL CABLE BUSINESS ASSOCIATION** to be deposited in the mail for delivery via First Class Mail to the following:

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